

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DAVID O. KREIER,

Appellant,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 230

FINDINGS OF FACT,
CONCLUSION AND ORDER

This matter, the appeal of a reservoir permit approved by respondent, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) in the counsel chambers of the City Hall, Vancouver, Washington at 2:00 p.m., June 25, 1973.

Appellant appeared pro se; respondent through Charles W. Lean, assistant attorney general. Thomas E. Archer, Kelso court reporter, recorded the proceedings.

Witnesses were sworn and testified. Five exhibits were offered, four admitted.

1 From testimony heard, exhibits examined and transcript reviewed,
2 the Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 On May 16, 1957, respondent's predecessor agency, the Department of
6 Conservation and Development, issued to Leroy E. Andersen and Oliver W.
7 Spitznogle a permit to withdraw for irrigation from an unnamed stream,
8 tributary to Rock Creek near Yacolt, Clark County, water in the amount
9 of 0.45 cubic foot a second (cfs). The permit was subject to two
10 principle provisions: (1) permit must be sought and obtained for a
11 dam and reservoir and (2) one-half of the stream's low flow shall be
12 allowed to bypass the dam at all times.

13 Subsequently, Mr. Andersen acquired the interests in this matter
14 of Mr. Spitznogle, who had died.

15 It is not possible, in low flow periods, for the stream to
16 produce 0.45 cfs without the construction of storage reservoir.

17 On March 8, 1971, Mr. Andersen filed Application No. R-22911 with
18 respondent for construction of a dam and storage reservoir to activate
19 the water appropriation he and Mr. Spitznogle had obtained in 1957. The
20 application was for the storage of 141-acre feet of water with 300-foot
21 dam thirty feet high.

22 II.

23 Respondent made a field examination in 1971 during the usually low-
24 flow month of September and estimated, after a rain, that the stream was
25 flowing at the rate of 0.4 cfs. Respondent's examiner, a man trained &
26 experienced in water resource matters, estimated the stream's low flow to

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1 be 0.2 cfs. He also estimated that the amount of water which would be
2 lost by evaporation from the 12-acre storage reservoir would be 0.12 cfs
3 in daylight hours annually from May 1 to September 30.

4 On the basis of this examination and estimates, respondent, on
5 November 3, 1972 approved Mr. Andersen's reservoir permit (No. R-22911)
6 subject to a bypass pipeline, to be approved by respondent, which would
7 provide at all times not less than 0.12 cfs of water below the dam. That
8 approval is the subject of this appeal.

9 III.

10 Appellant, for thirty-nine years the owner of 20 acres downstream
11 from the proposed dam, historically, and at present, maintains a small
12 herd of cattle (maximum, 16 head) which used the stream for stock watering.
13 He fears the dam will cause depletion of the stream so that his cattle
14 will be deprived of water and the value of his property will be lessened.
15 Because of intervening marshy areas, he does not believe the bypassed
16 water will reach his property located about a half mile downstream from
17 the dam during low flow periods.

18 IV.

19 A marshy area exists on property between the proposed dam and
20 appellant's acreage, but about one-half of the stream moves steadily
21 through this property even in low periods.

22 V.

23 Respondent's diversion rate to supply water for a 20-head herd
24 of cattle is 0.01 cfs (4½ gallons a minute). Respondent computes that
25 a cow consumes between 20 to 30 gallons of water a day.

26
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VI.

The "at all times" bypass amount of 0.12 cfs required by respondent in approving Application No. R-22911 is equal to 54 gallons a minute. This is more than one-half the estimated low flow of 0.2 cfs.

From these Findings, the Pollution Control Hearings Board comes to this

CONCLUSION

The question in this matter is whether the proposed dam and reservoir will deprive appellant of water to the extent that his cattle are deprived of water and he loses the property value of a flowing stream.

It seems logical, therefore, to examine what the stream now produces in low flow periods, the amount to be guaranteed by the proposed enforcement order of respondent and the amount required by a 20-head herd of cattle

Respondent has made no accurate low flow measurements of the stream. Neither has appellant, who concedes that the stream never runs dry even in extreme low flow periods. Respondent's expert witness estimates a low flow of 0.2 cfs (90 gallons a minute).

Respondent's proposed permit, by its terms, would guarantee an "at all times" flow of 0.12 cfs (54 gallons a minute) immediately below the dam. One-half of that amount will find its way through the marshy area above appellant's property and therefore some 27 gallons a minute should flow "at all times" into appellant's property.

The amount of water required by a 20-head herd of cattle, a larger herd than appellant ever has run on his property, is 0.01 cfs or 4½ gallons a minute.

It follows, then, that respondent's proposed order will provide

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1 some six times the amount of water "at all times" necessary for
2 appellant's cattle. It also follows that this is a sufficient,
3 guaranteed amount of water to maintain the enhancement which the flowing
4 stream gives to appellant's property value.

5 THEREFORE, the Pollution Control Hearings Board issues this

6 ORDER

7 The appeal is denied.

8 DONE at Lacey, Washington this 11th day of July, 1973.

9 POLLUTION CONTROL HEARINGS BOARD

10 Walt Woodward
11 WALT WOODWARD, Chairman

12 W. A. Gissberg
13 W. A. GISSBERG, Member

14 James T. Sheehy
15 JAMES T. SHEEHY, Member

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